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19  
20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF NEVADA**

22 MARK HUNT, an individual,  
23  
24 Plaintiff,  
25  
26 v.  
27  
28 ZUFFA, LLC d/b/a ULTIMATE  
FIGHTING CHAMPIONSHIP, a  
Nevada limited liability company;  
BROCK LESNAR, an individual;  
DANA WHITE, an individual; and  
DOES 1-50, inclusive,  
Defendants.

**Case No.: 2:17-cv-00085-JAD-CWH**

**MARK HUNT'S POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANT BROCK LESNAR'S  
REQUEST FOR JUDICIAL NOTICE  
PURSUANT TO FEDERAL RULES  
OF EVIDENCE RULE 201**

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1 Plaintiff, Mark Hunt (“Hunt”), respectfully requests that this Court deny Brock Lesnar’s  
 2 (“Defendant”) Request for Judicial Notice of Exhibits marked A through L. This Court should  
 3 exclude Defendant’s extrinsic evidence because the exhibits were not incorporated by reference,  
 4 and this Court’s consideration of Defendant’s motion to dismiss Hunt’s complaint should be  
 5 limited to the pleadings.<sup>1</sup>

## 6 I.

### 7 LEGAL STANDARD

8 As a general rule, “a district court may not consider any material beyond the pleadings in  
 9 ruling on a Rule 12(b)(6) motion.” *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001)  
 10 (citing *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994); see *Cervantes v. City of San Diego*, 5  
 11 F.3d 1273, 1274 (9th Cir. 1993) (holding when the legal sufficiency of a complaint’s allegation is  
 12 tested by a 12(b)(6) motion, “review is limited to the complaint.”). An exception to this general  
 13 is the doctrine of judicial notice pursuant to Federal Rule of Evidence 201. A court may take  
 14 judicial notice of “matters of public record” without converting a motion to dismiss into a motion  
 15 for summary judgment, but may not take judicial notice of a fact that is “subject to reasonable  
 16 dispute.” Fed. R. Evid. 201(b); *Lee*, 250 F.3d at 689 (citing *MGIC Indem. Corp. v. Weisman*, 803  
 17 F.2d 500, 204 (9th Cir. 1986).

## 18 II.

### 19 ARGUMENT

#### 20 **A. Judicial Notice Should be Denied or Extremely Limited**

21 This Court should deny each of Defendant’s requests for judicial notice, as discussed fully  
 22 below. However, to the extent the Court takes judicial notice of any such documents, it should be  
 23 limited to the mere fact that the documents exist, because the contents of the documents are  
 24 highly disputed. See *Montana Dep’t of Revenue v. Blixseth*, No. 2:13-CV-01324-JAD, 2016 WL  
 25 1183084, at \*2 (D. Nev. Mar. 28, 2016) (denying request for judicial notice to the extent it seeks  
 26 judicial notice of the truth of its contents); see also *Carrillo v. Gillespie*, No. 2:12-CV-02165-

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27  
 28 <sup>1</sup> Hunt incorporates his authority and argument presented in his opposition to UFC Defendants’ Request for Judicial Notice.

JAD, 2014 WL 1307454, at \*7 (D. Nev. Mar. 28, 2014) (holding Court could not take judicial notice of the truth or perjury regarding contents of police officer's sworn statement, because it was "subject to reasonable dispute" (interpreting Fed. R. Evid. 201)).

It is unclear whether Defendant's motion addresses incorporation by reference, however the attached exhibits are not properly subject to incorporation by reference because the Complaint does not "necessarily rely upon" the exhibits and their authenticity is contested. Mere reference to a document is insufficient to incorporate that document by reference into a complaint. *Van Buskirk v. CNN*, 248 F.3d 977, 980 (9th Cir. 2002). Moreover, the availability of a document on the Internet does not make the document "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned."

#### **Exhibit A – UFC Anti-Doping Policy**

Defendant offers the Anti-Doping Policy ("ADP") arguing it is subject to judicial notice. This argument is flawed because it seems to imply that a source's availability on the Internet makes it unquestionably accurate. It does not. Consideration of the ADP at this point of the litigation would be inappropriate and should not be allowed. Moreover, Defendant has failed to establish either that the ADP is "generally known within the territorial jurisdiction of the district court." The contents of the ADP cannot be said to be known generally by Nevada residents and the document is published on the UFC's own website, making it subject to reasonable dispute. Should the Court exercise its discretion and take judicial notice of the ADP, it should be only for the mere fact that it exists, not for the truth of its contents. *Lee*, 250 F.3d at 689.

#### **Exhibit B – June 7, 2016 Yahoo! Sports Article**

Defendant offers a *Yahoo! Sports* article arguing it is subject to judicial notice. Not only is the article hearsay, the accuracy and truth of its contents is clearly subject to reasonable dispute and should not be considered for the truth of its contents. Again, the article's availability on the Internet does not make it a "source whose accuracy cannot be reasonably questioned." Moreover, it would be inappropriate for the Court to take judicial notice of the truth of the contents of the article. The article does not meet the requirements for judicial notice, but if the Court were inclined to consider the article, it must

1 only consider the existence of the article.

2 **Exhibit C – Notice of Hearing and Notice of Disciplinary Complaint to Brock Lesnar**  
 3 **from the Nevada State Athletic Commission**

4 Defendant’s argument for judicial notice of this exhibit appears to be based on UFC  
 5 athletes being subject to the Nevada State Athletic Commission (“NSAC”). This does not meet  
 6 the requirements for judicial notice as stated above. Nothing in Defendant’s argument shows that  
 7 this exhibit is “generally known” or that it is from an accurate and reliable source that is not  
 8 subject to reasonable dispute. Moreover, mere reference in the complaint is not enough for this  
 9 Court to consider the exhibit. Defendant has not proved this exhibit is subject to judicial notice,  
 10 however, any such consideration should be limited to the existence of the exhibit, not the truth of  
 11 its contents.

12 **Exhibit D – Brock Lesnar’s Answer and Affirmative Defenses to the NSAC**  
 13 **Complaint**

14 Defendant’s argument fails to appropriately apply the doctrine of judicial notice. Athlete  
 15 penalties under the NSAC does not meet the requirements for judicial notice. Defendant fails to  
 16 show this exhibit is “generally known” or that it is from an accurate and reliable source that is not  
 17 subject to reasonable dispute. Should this exhibit be considered, it should not be considered for  
 18 the truth of its contents, but rather simply acknowledgment that it exists.

19 **Exhibit E – Brock Lesnar’s Motion for Continuance dated September 19, 2016**

20 Defendant argues that because the Complaint mentions Lesnar’s adjudication under  
 21 NSAC in passing that it is subject to judicial notice. For the reasons stated above, this Defendant  
 22 clearly fails to meet the requirement that it be generally known or from a reliable source that is  
 23 not subject to reasonable dispute.

24 **Exhibit F – Brock Lesnar’s Motion for Continuance dated October 25, 2016**

25 Defendant makes the same argument here as in Exhibit E. For the same reasons stated  
 26 above, this exhibit is not subject to judicial notice and should not be considered by this Court at  
 27 this early stage of the litigation.

28 **Exhibit G – NSAC Adjudication Agreement and Order**

1 Defendant makes the same argument here as in Exhibit E and Exhibit F. For the same  
2 reasons stated above, this exhibit is not subject to judicial notice and should not be considered by  
3 this Court at this early stage of the litigation.

4 **Exhibit H – UFC and USADA Press Release on January 4, 2017**

5 Defendant argues that because a press release is available on the Internet, that it is not  
6 subject to reasonable dispute and generally known within the territory. For the same reasons laid  
7 out at length above, this exhibit is not subject to judicial notice and should not be considered by  
8 this Court.

9 **Exhibit I – *MMA Fighting* article dated February 14, 2017**

10 Defendant argues that because an article is available online and is “illustrative” of certain  
11 facts that it is subject to judicial notice. Again, Defendant fails to adequately show how this  
12 exhibit is generally known or not subject to reasonable dispute. For the same reasons laid out at  
13 length above, this exhibit is not subject to judicial notice and should not be considered by this  
14 Court.

15 **Exhibit J – *MMA Fighting* article dated March 4, 2017**

16 Defendant argues that because an article is available online and is “illustrative” of certain  
17 facts that it is subject to judicial notice. Again, Defendant fails to adequately show how this  
18 exhibit is generally known or not subject to reasonable dispute. For the same reasons laid out at  
19 length above, this exhibit is not subject to judicial notice and should not be considered by this  
20 Court.

21 **Exhibit K – Mark Hunt’s Fight History**

22 Defendant offers Mark Hunt’s fight history, which is located on the UFC’s own website.  
23 Again, Defendant fails to adequately show how this exhibit is generally known or not subject to  
24 reasonable dispute. For the same reasons laid out at length above and in Plaintiff’s pleadings, this  
25 exhibit is not subject to judicial notice and should not be considered by this Court.

26 **Exhibit L – *MMA Fighting* article dated June 9, 2016**

27 Again, Defendant argues that because an article is available online and is “illustrative” of  
28 certain facts that it is subject to judicial notice, and fails to adequately show how this exhibit is

1 generally known or not subject to reasonable dispute. For the same reasons laid out at length  
2 above, this exhibit is not subject to judicial notice and should not be considered by this Court.

3 **Exhibit M – *MMA Fighting* article dated July 16, 2016**

4 Again, Defendant argues that because an article is available online, it is subject to judicial  
5 notice, and fails to adequately show how this exhibit is generally known or not subject to  
6 reasonable dispute. For the same reasons laid out at length above, this exhibit is not subject to  
7 judicial notice and should not be considered by this Court

8 **III.**

9 **CONCLUSION**

10 For the above reasons, Hunt respectfully requests that the Court deny Defendant's request  
11 for judicial notice, in its entirety.

12  
13 DATED: April 12, 2017

HIGGS FLETCHER & MACK LLP

14  
15 By: s:/CHRISTINA M. DENNING

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